

Dietary supplements may be classified as drugs if the products purport on the label to have medicinal qualities. See 86 Ill. Adm. Code 130.310(c)(1) (This is a GIL.)

September 14, 2004

Dear Xxxxx:

This letter is in response to your letter received May 3, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have been purchasing dietary supplements over the years from two different companies. ABC and XYZ. Just last year, XYZ. changed thier tax rate on the products I was purchasing. In questioning the increase, I was told by XYZ that they had been charging the incorrect tax rate, therefore the change. My belief was the tax rate they were charging had been incorrect on the non-food items. In the midst of calling the state and XYZ we came across conflicting information. XYZ stated they would need a Private Letter Ruling before they would make any adjustments to thier current tax rates. ENCLOSED is material to assist you in determining which tax rate the XYZ should be charging on the dietary supplements.

I am enclosing the INVOICES of the two companies I purchase dietary supplements from (ABC& XYZ) If you notice on the INVOICE from ABC. they list two different tax rates. XYZ on the other hand will list only one when food and non-food item have been purchased. This is what I need to be clarified with the XYZ. That a dietary supplement is considered a non-food item and is taxed in Illinois @ a different rate. XYZ is based outside of Illinois and has a lot of different rates to apply to the different state laws it ships its products to and need a Private Letter Ruling determining which of its products are considered to be taxed @ the lower rate.

Please send the Ruling to

XYZ

for more information about products, etc.

Please send a copy of the letter to me:

This is the second request for a ruling since the first request made about a year ago. I have not heard anything since the 1st request was made, so I am sending a duplicate request in case the 1st request did not go thru.

Thank you for your time and consideration.

For general information purposes, we are unable to issue a private letter ruling to someone other than yourself, unless that specific organization itself makes an appropriate request. The Department attempted a response to your first request on April 10, 2003, however, said response came back to the Department as "undeliverable." The information provided below will hopefully provide you with sufficient information to aid you in making a determination on the appropriate tax obligations.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax and Use Tax unless an exemption is specifically provided. Food, drugs, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1% plus any applicable local taxes. See 86 Ill. Adm. Code 130.310.

Pursuant to 86 Ill. Adm. Code 130.310(b)(1) the following definitions would apply: "[a] food is any solid, liquid, powder or item intended by the seller primarily for human consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." Under the above definitions, dietary supplements could be classified as food. Distributors who sell food items without a premises for consumption, such as those described in your letter, will generally incur liability at the tax rate of 1%, so long as the majority of food sales made by those distributors are not for food items that they prepare for immediate consumption.

A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See 86 Ill. Adm. Code 130.310(c)(1). A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain, or to mitigate the symptoms of such disease, illness, injury or pain constitutes a medicinal claim. See 86 Ill. Adm. Code 130.310(c).

Examples of medicinal claims that *will qualify* the product for the low rate of tax include, but are not limited to:

- i) medicated
- ii) heals (a medical condition)
- iii) cures (a medical condition)
- iv) for relief (of a medical condition)
- v) fights infection
- vi) stops pain
- vii) relief from poison ivy or poison oak
- viii) relieves itching, cracking, burning
- ix) a soaking aid for sprains and bruises
- x) relieves muscular aches and pains
- xi) cures athlete's foot
- xii) relieves skin irritation, chafing, heat rash and diaper rash

- xiii) relief from the pain of sunburn
- xiv) soothes pain

Please note the use of the terms "antiseptic," "antibacterial" or "kills germs" may or may not constitute a medicinal claim. The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim. However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns does constitute a medicinal claim.

Examples of claims that *do not* constitute medicinal claims include, but are not limited to:

- i) cools
- ii) absorbs wetness that can breed fungus
- iii) deodorant, or destroys odors
- iv) moisturizes
- v) freshens breath
- vi) antiperspirant
- vii) sunscreen
- viii) prevents
- ix) protects

Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the high rate. The term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice.

The products you have described in your letter may fall within the medicine and drug category depending on the labeling claims. Without the label descriptions, we cannot confirm which items would qualify for the low tax rate of 1%.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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